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Piping Technology and Products, Inc.
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8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF DELAWARE
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11 In re
12 VIRGIN ORBIT HOLDINGS, INC., et
al.,
13 Debtors.
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Case No. 23-10405 (KBO)

Chapter 11

(Jointly Administered)

Hearing Date:
December 6, 2023, 10:30 a.m. (ET)

21 **CREDITOR PIPING TECHNOLOGY AND PRODUCTS, INC.'S RESPONSE**
22 **TO DEBTOR'S FOURTH OMNIBUS (SUBSTANTIVE) OBJECTION TO**
23 **CLAIMS PURSUANT TO SECTION 502 OF THE BANKRUPTCY CODE,**
24 **BANKRUPTCY RULE 3007 AND LOCAL RULE 3007-1**
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1 Secured Creditor Piping Technology & Products, Inc. hereby files and serves
 2 its Response to Debtor's Fourth Objection to Creditor's Claims as follows:

3 **INTRODUCTION**

4 1. Debtor has sought to reclassify Piping Technology & Products, Inc.'s
 5 claim as an unsecured claim, without any legal or factual support therefore. In
 6 support of its objection, debtor states only that: "The claimant does not have a valid
 7 and perfected security interest in the debtor's property." Nowhere in its filing does it
 8 state the rationale behind that blanket (and false) assertion. Therefore, creditor
 9 provides the following points and authorities demonstrating why debtor is incorrect,
 10 but without knowing the basis for the statement made in the objection, creditor
 11 reserves the right to more fully respond at the hearing or in supplemental briefing if
 12 deemed appropriate by this Court.

14 **FACTUAL BACKGROUND**

15 2. Piping Technology & Products, Inc. ("PTP") is a manufacturer of high-
 16 quality, custom engineered pipe supports, clamps, expansion joints and other
 17 products. PTP was often requested by Virgin Orbit ("Virgin") to custom-engineer
 18 products for incorporation into Virgin's launch systems. The products supplied by
 19 PTP were manufactured according to specifications provided by Virgin.

20 3. On or about August 15, 2022, Virgin requested that PTP engineer and
 21 manufacture six hinged bellow joints that would be installed in a burned hydrocarbon
 22 system, to support Virgin's Launcher One program. The joints were manufactured
 23 and delivered to Virgin on January 18, 2023. PTP submitted two invoices, on
 24 January 13 and 31, for a total of \$52,399.74. Follow up requests for payment were
 25 made on February 13, February 20, February 24, February 27, March 3, March 6,
 26 March 9, March 13, March 17, March 20, March 28, and April 4. Finally, PTP
 27 prepared a mechanic's lien which it served on Virgin and sent to the recorder's office
 28 on April 19, 2023. It was officially recorded on April 21, 2023.

4. PTP timely filed its creditor claim in this matter on April 22, 2023. *See* Proof of Claim #43. PTP's proof of claim attached the mechanic's lien and its invoices to Virgin. PTP was identified as a "Class 2" secured creditor and was placed in "Group A" for repayment in full as part of the Chapter 11 Reorganization Plan confirmed on August 2, 2023.

THE LIEN WAS TIMELY AND PROPERLY RECORDED.

5. PTP is a direct contractor as defined by California Civil Code section 8012.¹ Direct contractors that provide work authorized for a work of improvement have a lien right under California Civil Code section 8400, *et seq.* "Work" is defined as "labor, service, equipment, or material provided to a work of improvement." Cal. Civ. Code § 8048. "Work of improvement" means the "entire structure or scheme of improvement as a whole, and includes site improvement." Cal. Civ. Code § 8050.

6. In this case, the materials that were manufactured and supplied to Virgin by PTP were part of a larger "work of improvement." Upon information and belief, the "work" on that "work of improvement" ceased on or about March 15, 2023, when the company announced a pause in operations prior to ultimately filing for bankruptcy on April 4, 2023.

7. Under California Civil Code section 8412, a contractor must record a lien on the earlier of (i) ninety days after completion of the work of improvement, or (ii) sixty days after the owner records a notice of completion or cessation.² Completion of the work occurs: (i) upon actual completion of the work of improvement; (ii) occupation or use by the owner accompanied by cessation of labor;

¹ A direct contractor is someone with a direct contractual relationship with the owner and, when that person provides material or equipment designed to specifications (versus stock items), the person is a contractor and not a material supplier. *See Theisen v. Los Angeles County*, 54 Cal.2d 170, 183-84 (1960).

² PTP is a "direct contractor" as defined by Cal. Civ. Code § 8012. A direct contractor is excluded from the preliminary notice requirements of Civil Code § 8200 where, as here, there is no construction lender.

(iii) cessation of labor for a continuous period of 60 days; or, (iv) recordation of a notice of cessation after cessation of labor for a continuous period of 30 days. Cal. Civ. Code § 8180. Upon information and belief, the work was never actually completed, although there was a cessation of labor that began on or about March 15, 2023 and continued for sixty days. Therefore, PTP had until May 14, 2023 to record its mechanic's lien. It was recorded well in advance of that deadline, on April 21, 2023.

THE LIEN DID NOT VIOLATE THE AUTOMATIC STAY

8. “A mechanic’s lien claimant who provided labor and materials prepetition to a debtor in bankruptcy can record a mechanic’s lien after the property owner files for bankruptcy without violating the automatic stay.” *Pioneer Construction, Inc. v. Global Investment Corp.*, 202 Cal.App.4th 161, 167 (2011), citing 11 U.S.C. § 362(b)(3).

**NO ACTION TO PERFECT THE LIEN IS REQUIRED WHILE THE
BANKRUPTCY IS PENDING.**

9. In addition to recording a lien, a claimant must commence an action to enforce a lien within ninety days after recordation. Cal. Civ. Code § 8460(a). Because Virgin filed for bankruptcy, triggering an automatic stay, no litigation could be commenced to enforce the lien. The deadline set forth under California Civil Code section 8460(a) is tolled while the automatic bankruptcy stay is in place. *See In re Etherton*, 88 F.Supp.874 (S.D.Cal. 1950); *Pioneer Construction*, 202 Cal.App.4th at 167.

10. As recently described by the Ninth Circuit Court of Appeals, the “foreclosure action that § 8460(a) of the California Civil Code requires is one of lien enforcement, not of perfection or maintenance or continuance of perfection; therefore, the notice provision of § 546(b)(2) [of the Bankruptcy Code] does not apply. Instead, if the holder of a mechanic’s lien is required under § 8460(a) to

1 commence an action to *enforce* the lien and the automatic stay is in effect, § 108(c)
 2 of the Bankruptcy Code operates to toll the 90-day deadline to commence the
 3 action.” *In re 450 S. Western Ave, LLC*, 2023 WL 2851378, *2 (9th Cir. April 10,
 4 2023) (emphasis in original).

6 **THE HOLDER OF A MECHANIC’S LIEN IS A SECURED CREDITOR.**

7 11. Mechanic’s liens are enshrined in the California constitution:
 8 “Mechanics, persons furnishing materials, artisans, and laborers of every class, shall
 9 have a lien upon the property upon which they have bestowed labor or furnished
 10 material for the value of such labor done and material furnished; and the Legislature
 11 shall provide, by law, for the speedy and efficient enforcement of such liens.” Cal.
 12 Cons., art. XIV, § 3. “A mechanic’s lien gives a contractor, supplier, or laborer a
 13 security interest in real property to secure the right to payment for work performed or
 14 materials delivered.” *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.*, 56
 15 Cal.App.5th 413, 422.

16 12. The holder of an inchoate mechanic’s lien is a secured creditor within
 17 the meaning of the Bankruptcy Code. *In re Golfview Developmental Center, Inc.*,
 18 309 B.R. 758, 769 (N.D. Illinois 2004); 11 U.S.C. § 101(37). Such a lienholder is
 19 entitled to the full value of its claim, as is PTP. *Id.* at 776.

21 **CONCLUSION**

22 13. PTP is the holder of a timely and validly recorded mechanic’s lien under
 23 California law and as such, is a secured creditor under 11 U.S.C. § 101(37). There is
 24 no basis for reclassification under state or federal law and PTP should maintain its
 25 status as a secured creditor in these proceedings.

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1 14. The undersigned legal representative of PTP has ultimately authority to
2 reconcile, settle or otherwise resolve the Disputed Claim on behalf of the Respondent
3 and the debtor should serve any response thereon.

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5 Dated: November 20, 2023

TROYGOULD PC

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8 By:  _____

9 Amy L. Nashon
10 Attorneys for Creditor
11 Piping Technology and Products, Inc.
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